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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUL 10 2003

File: [redacted] Office: Texas Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and a subsequent motion to reopen was denied by the Acting Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ her as a "Music Director" at a salary of $18,000 per year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously engaged in a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel for the petitioner submitted a written brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

[redacted]

The petitioner in this matter is a church affiliated with the Southern Baptist Convention. It did not provide a description of the size of its congregation or the number of employees. The beneficiary is a native and citizen of Korea who was last admitted to the United States on December 28, 1999, as a B-2 visitor. The record reflects that she was granted approval for R-1 classification, authorized for employment with the petitioner, such status valid from June 1, 2000 until June 1, 2002.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

At issue in this matter is whether the petitioner established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on October 27, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least October 27, 1998.

In this case, the petitioner stated that it has employed the alien as a choir director since June 1, 2000. A letter was also submitted stating that the beneficiary worked as a "volunteer for the petitioner from January 1, 2000 until May 31, 2000 and prior to that was employed by an affiliated church in Korea from May 7, 1999 to December 26, 1999 when she departed for the United States. On appeal, counsel for the petitioner explained that during the period that the beneficiary was in B-2 classification, from January 2000 to May 2000, the beneficiary was not employed by the church, but that she volunteered with the church.

The Service defines a religious occupation, in part, as full-time paid employment. Incidental voluntary activities with one's church are not considered engagement in a religious occupation, and the services provided are not considered qualifying experience in a religious occupation. The statute and its implementing regulations require that the prior experience have been "continuous." After consideration of the documentation submitted by the petitioner, it must be concluded that the beneficiary's approximate five-month break in employment, from January 2000 to May 2000, constituted a break in her continuous engagement in a religious occupation.

Therefore, the petitioner has failed to overcome the director's concerns.

Beyond the decision of the director, the petitioner also must establish that the alien beneficiary was continuously carrying on the a religious vocation for at least the two years preceding the filing of the petition. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.